

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

JESSE PIERCE and MICHAEL PIERCE,)	
on behalf of themselves and all others)	
similarly situated,)	CASE NO. 3:13-cv-641
)	
Plaintiffs,)	District Judge: Pamela L. Reeves
)	Magistrate Judge: C. Clifford Shirley, Jr.
vs.)	
)	
WYNDHAM VACATION RESORTS,)	
INC., and WYNDHAM VACATION)	
OWNERSHIP, INC.,)	
)	
Wyndham.)	

**DEFENDANTS' DAUBERT MOTION TO EXCLUDE
EXPERT TESTIMONY OF DR. DWIGHT D. STEWARD**

Defendants Wyndham Vacation Resorts, Inc. and Wyndham Vacation Ownership, Inc. ("Wyndham") pursuant to paragraph 6(d) of the Scheduling Order (Doc. 203) move the Court for an order excluding the testimony at trial of Plaintiffs' expert Dr. Dwight Steward upon the grounds that it fails to meet the standards of the Federal Rules of Evidence, including Fed. R. Evid. 702, and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). In support, Wyndham states as follows:

1. Fed. R. Civ. P. 26(a)(2)(A) required Plaintiffs to disclose the identity of any expert witness they may use at trial to present evidence under Fed. R. Evid. 702, 703, or 705. In addition Fed. R. Civ. P. 26 (a) (2)(B) states that this disclosure be accompanied by a written report containing the described required information.
2. The Scheduling Order entered on September 16, 2016 required Plaintiffs to make their expert disclosures on February 13, 2017 (Doc. No. 203).

3. On February 13, 2017 Plaintiffs' counsel electronically served what purported to be Plaintiffs' Expert Disclosure in which they identified Dr. Dwight Steward, who they may call "as an expert witness to testify and present evidence." They also attached his written report pursuant to Fed. R. Civ. P. 26(a)(2)(B), which was filed with the Court on March 17, 2017 (Doc. No. 219-2).

4. At the May 9, 2017 hearing, Plaintiffs' counsel stated to the Court that Dr. Steward's expert report is his "final report." *Transcript of Proceedings Before the Honorable C. Clifford Shirley, Jr.*, May 9, 2017 (Doc. No. 256, p. 131).

5. The final report is deficient in many respects under Rule 26(a)(2)(B) but most fundamentally in failing to include the mandatory complete statement of Dr. Steward's opinions. Indeed, his opinion is nothing more than a preliminary statement regarding his belief that statistical methods can be used in the case. His report suggests that he will do his analysis of the data at some future time. He gives no final opinion, and there is no completed analysis of the data and other information on the issues of Wyndham's alleged liability and Plaintiffs' alleged damages.

6. The scope of Dr. Steward's testimony is limited to the contents of his final report.

7. Wyndham has filed its Motion to Prohibit Plaintiffs from Introducing Expert Testimony and Expert Report in Evidence (Doc. No. 218) and the Memorandum in Support of Defendants' Motion to Prohibit Plaintiffs from Introducing Expert Testimony and Expert Report in Evidence (Doc. No. 219) which are incorporated herein by reference as further grounds for this motion.

8. Wyndham's position is more fully set forth in the accompanying supporting memorandum.

WHEREFORE, Wyndham respectfully requests that the Court enter an order granting its Daubert motion to exclude the testimony of Dr. Dwight Steward at trial or any other proceeding in this matter. Wyndham also requests its reasonable costs and attorney's fees.

Respectfully submitted,

s/ Colby S. Morgan, Jr.

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of July, 2017, electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically send an electronic notification of such filing to the following:

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s/ Colby S. Morgan, Jr. _____